

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

Docket No. CERCLA-08-2005-0006

2005 JUL 11 AM 10:06

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:
HAYDEN RANCH

UNDER THE AUTHORITY OF THE
COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND
LIABILITY ACT OF 1980, 42 U.S.C.
§ 9601, et seq., as amended,

) SUCCESSOR ADDENDUM
) TO
) AGREEMENT AND COVENANT
) NOT TO SUE
)
) RE: COLORADO
) PRESERVATION, INC.

I. INTRODUCTION

1) This Successor Addendum ("Addendum") to the Agreement and Covenant Not to Sue that was effective on April 14, 1998 (hereinafter referred to as the "Agreement" and attached hereto as Exhibit 1) is made and entered into by and between the United States, on behalf of the United States Environmental Protection Agency ("EPA") and the United States Department of Interior ("DOI"), and Colorado Preservation, Inc., a Colorado non-profit corporation ("CPI") (collectively the "Parties").

2) This Addendum is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3) This Addendum represents EPA's and DOI's written consent pursuant to Paragraph 31 of the Agreement to transfer certain rights, benefits, and obligations of the Agreement to CPI.

4) The City of Aurora ("Aurora"), a Colorado municipal corporation, owns approximately 2,000 acres known as the "Hayden Ranch," described in Exhibit 1 of the Agreement, along

approximately 5 miles of the Arkansas River in Lake County, Colorado. CPI plans to purchase from Aurora the 35.38 acre parcel described in Exhibit 2 on Hayden Ranch known as "River Parcel D." A map of the Hayden Ranch Property, including River Parcel D is attached as Exhibit 3.

- 5) Aurora has settled its potential CERCLA liabilities arising from existing contamination on the Hayden Ranch Property through the Agreement entered into by EPA, DOI, and Aurora.

II. PARTIES BOUND/TRANSFER OF COVENANT

- 6) By this Addendum, the Parties agree to be bound to all of the terms and conditions of the Agreement, with the specific exceptions set out below:

- a) CPI shall have no obligation regarding the repository as specified in Paragraph 14 of the Agreement.
- b) CPI shall have no obligation to make water rights available to EPA or DOI as specified in Paragraph 15 of the Agreement.
- c) CPI shall have no obligation to comply with any provisions of the Agreement that relate to a portion of the Hayden Ranch Property not conveyed to CPI.

- 7) This Addendum shall apply to and be binding upon the United States and shall apply to and be binding on CPI, its officers, directors, employees, and agents. Each signatory of a Party to this Addendum represents that he or she is fully authorized to enter into the terms and conditions of this Addendum and to legally bind such Party.

- 8) Notwithstanding any other provisions of this Addendum, all of the rights, benefits and obligations conferred upon CPI under this Addendum may be assigned or transferred to any person with the prior written consent of EPA and DOI in their sole discretion.

- 9) This Addendum may be assigned or transferred, without the prior written consent of EPA and DOI, to any federal agency or State agency or subdivision of the State provided such federal agency or State agency or subdivision of the State has consented in writing to be bound by the terms of this Addendum. CPI shall provide EPA and DOI 30 days notice prior to assigning or transferring this Addendum to a federal agency, State agency, or subdivision of the State.
- 10) CPI agrees to pay the reasonable costs incurred by EPA and DOI to review any subsequent requests for consent to assign or transfer the benefits conferred by this Addendum.
- 11) In the event of an assignment or transfer of River Parcel D or an assignment or transfer of an interest in River Parcel D, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Addendum except as EPA and DOI, and the assignor or transferor agree otherwise and modify this Addendum, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of River Parcel D, the assignee or transferee must consent in writing to be bound by the terms of this Addendum including but not limited to the certification requirement in Section VII of the Agreement in order for the Covenant Not to Sue in Section VIII of the Agreement to be available to that party. The Covenant Not To Sue in Section VIII of the Agreement shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA and DOI.

III. EFFECTIVE DATE

- 12) The effective date of this Addendum shall be the date upon which EPA and DOI have fully executed the Addendum.

IV. EXHIBITS

- 13) Exhibit 1 shall mean the Agreement.
- 14) Exhibit 2 shall mean the legal description of River Parcel D to be acquired by CPI.

15) Exhibit 3 shall mean the map of the Hayden Ranch Property including map of River Parcel

D to be acquired by CPI.

THIS SIGNATURE PAGE MAY BE EXECUTED IN COUNTERPARTS

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BY:

Robert E. Roberts, Date
Regional Administrator
U.S. Environmental Protection Agency, Region 8

IT IS SO AGREED:

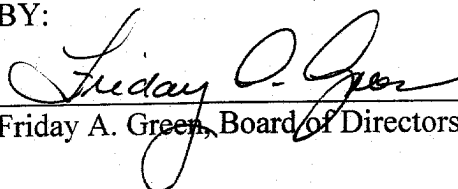
UNITED STATES DEPARTMENT OF INTERIOR
BY:

John S. Retrum, Esq. Date
Attorney Advisor
Office of the Regional Solicitor
U.S. Department of Interior

IT IS SO AGREED:

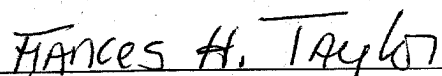
COLORADO PRESERVATION, INC., a Colorado non-profit corporation

BY:



Friday A. Green, Board of Directors, President

WITNESSED BY:



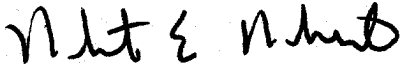
Frances Taylor, Board of Directors, Secretary

Date: JUL - 6, 2005

THIS SIGNATURE PAGE MAY BE EXECUTED IN COUNTERPARTS

IT IS SO AGREED:

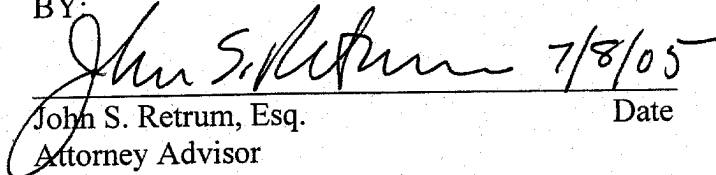
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BY:

 JUL 08 2005

Robert E. Roberts, Date
Regional Administrator
U.S. Environmental Protection Agency, Region 8

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF INTERIOR
BY:

 7/8/05

John S. Retrum, Esq. Date
Attorney Advisor
Office of the Regional Solicitor
U.S. Department of Interior

IT IS SO AGREED:

COLORADO PRESERVATION, INC., a Colorado non-profit corporation

BY:

Friday A. Green, Board of Directors, President

WITNESSED BY:

Frances Taylor, Board of Directors, Secretary

Date: _____, 2005

EXHIBIT "1"
AGREEMENT AND COVENANT NOT TO SUE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
Docket No. CERCLA VIII-98-

IN THE MATTER OF:
HAYDEN RANCH

UNDER THE AUTHORITY OF THE
COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND
LIABILITY ACT OF 1980, 42 U.S.C.
§ 9601, et seq., as amended,

) AGREEMENT AND COVENANT
) NOT TO SUE
) RE: THE CITY OF AURORA,
) COLORADO,
) acting by and through its
) Utility Enterprise

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States, on behalf of the United States Environmental Protection Agency ("EPA") and the United States Department of Interior ("DOI"), and the City of Aurora, acting by and through its Utility Enterprise (collectively the "Parties").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

The Hayden Ranch Property ("Property") covers approximately 2000 acres and stretches along approximately 5 miles of the Arkansas River in Lake County, Colorado. The City of Aurora is a Colorado Home Rule municipality. The City of Aurora, acting by and through its Utility Enterprise ("Settling Respondent"), intends to purchase the Hayden Ranch from Twin Ark Valley Limited to acquire certain appurtenant water rights and may resell the

land to other governmental or private entities for use as parks, open space, wildlife habitat, recreation, and/or other uses.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondent for the Existing Contamination and for any hazardous substances, pollutants or contaminants which EPA or DOI remove, or direct be removed, from the Upper Arkansas Fluvial Tailings Site, and which are placed in the repository to be designated pursuant to Paragraph 14 which would otherwise result from Settling Respondent becoming the owner of the Property.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent. The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA and DOI of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

2. "DOI" shall mean the United States Department of the Interior and any successor departments or agencies.

3. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Hayden Ranch Property as of the effective date of this Agreement.

4. "Parties" shall mean EPA, DOI, and the Settling Respondent.

5. "Property" or "Hayden Ranch Property" shall mean that property described in Exhibit 1 of this Agreement.

6. "Restoration" shall mean all phases of work undertaken to restore natural resources, including but not limited to assessment work to determine the nature and extent of injuries to natural resources.

7. "Settling Respondent" shall mean the City of Aurora, acting by and through its Utility Enterprise.

8. "State" shall mean the State of Colorado.

9. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

10. The "Upper Arkansas Fluvial Tailings Site" shall mean that portion of the Arkansas River basin commencing at the confluence with California Gulch extending down stream

approximately 11 miles and depicted generally on the map attached as Exhibit 2.

III. STATEMENT OF FACTS

11. The Hayden Ranch Property is located adjacent to the upper Arkansas River downstream from areas of mining activities including the California Gulch historic mining district in and around Leadville, Colorado. Mining activity has occurred upstream of the Property for approximately 130 years. During that time, mining wastes have been washed down the Arkansas River and have come to be located in, inter alia, fluvial tailings deposits on and adjacent to the Hayden Ranch Property. A preliminary assessment has shown that there are at least 20,000 cubic yards of fluvial tailings with elevated levels of metals on the Property that are a potential concern to EPA and DOI (see Fall 1997 Sampling Activity Report attached as Exhibit 3).

12. The Hayden Ranch Property has been owned for the last 25 years and is presently owned by Twin Ark Valley Limited, a Colorado limited partnership, and is leased for ranching purposes.

13. The Settling Respondent represents, and for the purposes of this Agreement the United States relies on those representations, that Settling Respondent has had no involvement with the Property or the Upper Arkansas Fluvial Tailings Site.

IV. WORK TO BE PERFORMED AND OTHER CONSIDERATION

14. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, Settling

Respondent agrees that it shall make available for use by the United States in performing removal or restoration actions at the Upper Arkansas Fluvial Tailings Site a repository for disposal of fluvial tailings that EPA or DOI may determine should be excavated and removed from their present locations. Settling Respondent shall designate, within 90 days from the effective date of this Agreement and with the approval of EPA and DOI, the area within the Property for the repository. Settling Respondent shall have no obligation to provide funds for the construction, operation, or maintenance of the repository including the construction and monitoring of wells while materials are being placed in the repository. In addition, Settling Respondent shall have no obligation to fund any response or restoration actions performed on the Property, except as provided herein. Settling Respondent shall have the responsibility for routine long-term maintenance and monitoring of the repository and any other areas within the Property where in-situ response or restoration activities will be performed by or at the direction of EPA or DOI, unless the United States can arrange for potentially liable parties to undertake the activities. Such obligation, if any, will commence after EPA and DOI have certified that the repository has been closed, and the response or restoration activities have been completed. Settling Respondent shall perform the long-term maintenance and monitoring in accordance with a plan approved by EPA and DOI. The long-term monitoring

and maintenance plan, when completed, shall be appended to this Agreement as Exhibit 4.

15. Settling Respondent will make water rights available to EPA or DOI for temporary uses incident to removal or restoration activities on the Property. These water rights will be made available at the headgate location of the Upper River, Pioneer, Champ, Wheel, or Section House Ditches, and they will be made available for a period of three years from the date of their first use. The volume of water provided will not exceed 100 acre-feet annually and its annual delivery will be subject to the emergency needs of the City of Aurora as determined by Settling Respondent.

16. Settling Respondent agrees to in good faith pursue an agreement with the United States for the dedication of a reasonable portion of the Hayden Ranch to be used for open space, wildlife habitat, recreational, or other use consistent with the protection of open land and water having wholesome environmental quality and life-sustaining ecological diversity.

V. ACCESS/NOTICE/INSTITUTIONAL CONTROLS

17. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to the United States, its authorized officers, employees, representatives, and all other persons performing response or restoration actions under EPA or DOI oversight, an irrevocable right of access at all reasonable times to the Property and to any other property under Settling Respondent's control, to which access is required for

the implementation of response or restoration actions at the Property for the purposes of performing and overseeing response or restoration actions at the Property under federal and State law. EPA and DOI agree to provide reasonable notice to the Settling Respondent of the timing of response or restoration actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA and DOI retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., the Clean Water Act, and any other applicable statute or regulation, including any amendments thereto.

18. Settling Respondent understands that use of certain portions of the Property may need to be restricted to prevent unsafe exposure to hazardous substances and pollutants or contaminants, or to protect completed response and restoration projects. Upon identification of areas where institutional controls are necessary, Settling Respondent shall cooperate with EPA and DOI in establishing institutional controls that will mitigate these unsafe exposures or protect completed response and restoration projects. Such institutional controls may include, but are not limited to, deed restrictions, zoning restrictions, restrictive covenants, or other land-use restrictions.

19. Within 30 days after the effective date of this Agreement, the Settling Respondent shall record a certified copy

of this Agreement with the Clerk and Recorder's Office, Lake County, State of Colorado. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

20. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, Section XI (Parties Bound/Transfer of Covenant), and Section IV (Work to be Performed), of the Agreement.

VI. DUE CARE/COOPERATION

21. The Settling Respondent shall exercise due care at the Property with respect to the Existing Contamination and with respect to any hazardous substances, pollutants or contaminants which EPA or DOI remove, or direct be removed, from the Upper Arkansas Fluvial Tailings Site, and which are placed in the repository to be designated pursuant to Paragraph 14, and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response or restoration actions at the Property

may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA and DOI in the implementation of response and restoration actions at the Property and further agrees not to interfere with such actions. EPA and DOI agree, consistent with their responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and activities. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

22. By entering into this Agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA and DOI all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees,

contractors and agents which relates in any way to any Existing Contamination, any hazardous substances, pollutants or contaminants which EPA or DOI remove, or direct be removed, from the Upper Arkansas Fluvial Tailings Site, and which are placed in the repository to be designated pursuant to Paragraph 14, or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property or the Upper Arkansas Fluvial Tailings Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property or the Upper Arkansas Fluvial Tailings Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

23. Subject to the Reservation of Rights in Section IX of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief, reimbursement of response costs, or natural resources damages pursuant to Sections 106, 107(a), or 107(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), 9607(f), and for any and all civil liability for natural resource damages pursuant to Section 311(b)(3) of the

Clean Water Act, 42 U.S.C. § 1321(b)(3), with respect to: (a) the Existing Contamination; and (b) any hazardous substances, pollutants or contaminants which EPA or DOI remove, or direct be removed, from the Upper Arkansas Fluvial Tailings Site, and which are placed in the repository to be designated pursuant to Paragraph 14. These covenants not to sue shall take effect upon Settling Respondent's purchase of the Property or recording of the Notice required by Paragraph 19, whichever is later.

IX. RESERVATION OF RIGHTS

24. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Work to be Performed), Section V (Access/Notice/Institutional Controls), Section VI (Due Care/Cooperation), and Section XIV (Payment of Costs);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Property caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property after the effective date of this Agreement, not within the definition of Existing Contamination and which were not placed in the repository to be designated pursuant to Paragraph 14 by or at the direction of EPA or DOI;

(e) criminal liability; and

(f) liability for violations of local, State or federal law or regulations.

25. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination or hazardous substances, pollutants or contaminants which were placed in the repository to be designated pursuant to Paragraph 14 by or at the direction of EPA or DOI.

26. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement. In particular, nothing in this Agreement is intended to limit the ability of the United States to bring claims for

response costs or natural resource damages, including assessment costs, against parties other than Settling Respondent.

27. Nothing in this Agreement is intended to limit the United States from undertaking future response or restoration actions at the Property or to seek to compel parties other than the Settling Respondent to perform or pay for response or restoration actions at the Property. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response or restoration actions which may be taken or be required by EPA or DOI in exercising their authorities under federal law. Settling Respondent acknowledges that it is purchasing property where response or restoration actions may be required.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

28. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Property or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Property, or any claims arising out of

response or restoration activities at the Property, including claims based on EPA's or DOI's oversight of such activities or approval of plans for such activities.

29. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

30. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding on the Settling Respondent, its officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

31. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with the prior written consent of EPA and DOI in their sole discretion. This Agreement may be assigned or transferred, without the prior written consent of EPA and DOI,

to any federal agency or State agency or subdivision of the State provided such federal agency or State agency or subdivision of the State has consented in writing to be bound by the terms of this Agreement. Settling Respondent shall provide EPA and DOI 30 days notice prior to assigning or transferring this Agreement to a federal agency, State agency, or subdivision of the State.

32. The Settling Respondent agrees to pay the reasonable costs incurred by EPA and DOI to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

33. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and DOI, and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA and DOI.

XII. DISCLAIMER

34. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property nor constitutes any representation by EPA or DOI that the Property is fit for any particular purpose.

XIII. DOCUMENT RETENTION

35. The Settling Respondent agrees to retain and make available to EPA and DOI all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA and DOI of the location of such documents and shall provide EPA and DOI with an opportunity to copy any documents at their expense. Settling Respondent may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Respondent asserts such a privilege, it shall provide the United States with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted.

However, no documents, reports, or other information created or generated pursuant to the requirements of this Agreement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to United States in redacted form to mask the privileged information only. Settling Respondents shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Respondent's favor.

XIV. PAYMENT OF COSTS

36. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Work to be Performed) of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the

Agreement with respect to the United States, EPA, DOI, and Settling Respondent, respectively.

As to the United States:

As to DOJ: Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ# 90-11-3-138)
Washington, D.C. 20044-7611

As to EPA: Site Attorney, Upper Arkansas Fluvial Tailings Site
Mail Code: 8ENF-L
U.S. Environmental Protection Agency,
Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202

On-Scene Coordinator, Upper Arkansas Fluvial Tailings Site
Mail Code: 8EPR-SA
U.S. Environmental Protection Agency,
Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202

As to DOI: Regional Director, Region 6
U.S. Fish and Wildlife Service, Colorado Field Office
P.O. Box 25486-DFC
Denver, Colorado 80225

Colorado Field Supervisor
U.S. Fish and Wildlife Service, Colorado Field Office
P.O. Box 25486-DFC
Denver, Colorado 80225-0207

Regional Solicitor
Rocky Mountain Region
U.S. Department of Interior
755 Parfet, Room 151
Lakewood, Colorado 80215

As to Settling Respondent:

Director of Utilities
1470 South Havanna Street
Suite 400
Aurora, Colorado 80012

John M. Dingess, Esq.
Duncan, Ostrander, & Dingess
Special Counsel
7800 East Union Ave.
Suite 550
Denver, Colorado 80237

XVI. EFFECTIVE DATE

38. The effective date of this Agreement shall be the date upon which EPA and DOI issue written notice to the Settling Respondent that EPA and DOI have fully executed the Agreement after review of and response to any public comments received.

XVII. TERMINATION

39. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

40. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response or restoration actions taken or

to be taken and response or restoration costs incurred or to be incurred by the United States or any other person for the Property with respect to the Existing Contamination or hazardous substances, pollutants or contaminants which were placed in the repository to be designated pursuant to Paragraph 14 by or at the direction of EPA or DOI.

41. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

42. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

XIX. EXHIBITS

43. Exhibit 1 shall mean the description of the Property which is the subject of this Agreement.

44. Exhibit 2 shall mean the map depicting the Upper Arkansas Fluvial Tailings Site.

45. Exhibit 3 shall mean the Fall 1997 Sampling Activities Report.

46. Exhibit 4 shall mean the Monitoring and Maintenance Plan to be appended in the future.

XX. PUBLIC COMMENT

47. This Agreement shall be subject to a fifteen-day public comment period, after which EPA and DOI may modify or withdraw

its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XXI. COUNTERPARTS

48. This Agreement may be executed in counterparts, each of which when executed shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

IT IS SO AGREED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By:

Wm Yellowtail
WILLIAM P. YELLOWTAIL
Regional Administrator
U.S. Environmental Protection Agency
Region VIII

Date:

6 March 1998

IT IS SO AGREED BY THE UNITED STATES DEPARTMENT OF JUSTICE

BY:

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530

Date:

its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XXI. COUNTERPARTS

48. This Agreement may be executed in counterparts, each of which when executed shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

IT IS SO AGREED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

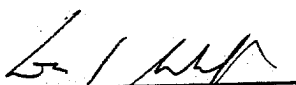
By:

WILLIAM P. YELLOWTAIL
Regional Administrator
U.S. Environmental Protection Agency
Region VIII

Date: _____

IT IS SO AGREED BY THE UNITED STATES DEPARTMENT OF JUSTICE

BY:



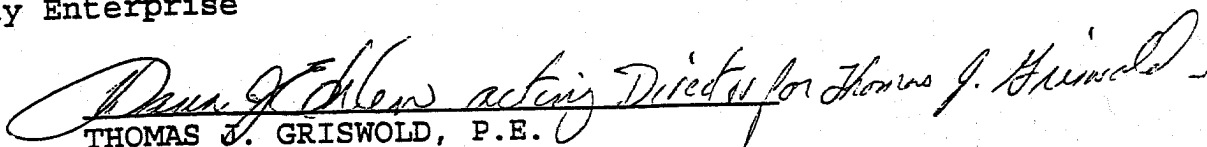
LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530

Date: _____

3/15/98

IT IS SO AGREED BY THE CITY OF AURORA, COLORADO
acting by and through its
Utility Enterprise

By:

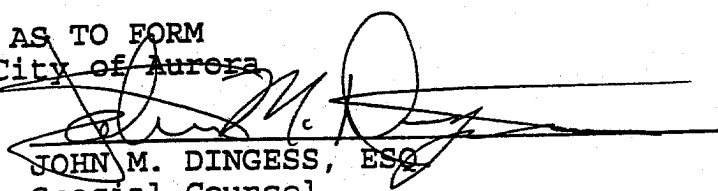

THOMAS J. GRISWOLD, P.E.
Director of Utilities

Date:

3/6/98

APPROVED AS TO FORM
for the City of ~~Aurora~~

By:


JOHN M. DINGESS, ESQ.
Special Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII (BENF-L)
999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2406

APR 14 1998

SDMS Document ID



2023831



Ref: BENF-L

VIA FIRST CLASS MAIL

John Dingess, Esq.
Duncan, Ostrander & Dingess, P.C.
7800 East Union
Suite 200
Denver, CO 80237

Re: Hayden Ranch Prospective
Purchaser Agreement Final
Prospective Purchaser
Agreement - Effective Date

Dear John:

Pursuant to Section XVI of the Agreement and Covenant Not to Sue ("Agreement") between the United States Environmental Protection Agency ("EPA"), United States Department of Interior ("DOI") and the City of Aurora, acting by and through its Utility Enterprise ("Aurora"), EPA and DOI hereby notify Aurora that the public comment period closed on April 10, 1998, that the Agreement is fully executed, and that no comments were received on the Agreement. Thus, pursuant to Section XVI, the effective date of the Agreement shall be the date of this letter.

Sincerely,

Richard L. Sisk
Enforcement Counsel
U.S. Environmental Protection Agency

and

Marilyn Averill
Office of the Solicitor
U.S. Department of Interior

cc: Rebecca Thomas, EPA, SHMM-SR
Mike Holmes, SOC
Jerry Ellington, DOJ
Barry E. Hill, SOL/DOI



Printed on Recycled Paper

**EXHIBIT 1
TO
AGREEMENT AND COVENANT NOT TO SUE
BETWEEN
THE UNITED STATES AND THE CITY OF AURORA, ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE
LEGAL DESCRIPTION OF PROPERTY**

Township 10 South, Range 80 West, 6th P.M.

Section 22: S/2NW/4, SW/4, W/2SE/4

Section 27: E/2NW/4, NW/4NW/4, W/2NE/4,
E/2SW/4, W/2SE/4, SE/4SE/4

Section 34: ALL

Section 35: SW/4 less one acre occupied by school.

Township 11 South, Range 80 West, 6th P.M.

Section 2: S/2SW/4, NW/4SW/4

Section 3: E/2, E/2NW/4

Section 10: SW/4, E/2NE/4

Section 11: W/2, W/2NE/4, W/2SE/4, SE/4SE/4

LESS AND EXCEPT THE FOLLOWING DESCRIBED PORTIONS OF LAND:

1. That portion of Section Twenty-Seven (27), Township 10 South, Range 80 West of the 6th P.M., as described in Warranty Deed to Mount Massive Lakes, Inc., a corporation, recorded in Book 318 at Page 57 of the Lake County, Colorado records, to-wit:

Tract no. 1

All that part of the Northwest Quarter Northeast Quarter (NW/4NE/4) of Section 27, Township 10 South, Range 80 West of the 6th P.M., and all that part of the Southwest Quarter Southeast Quarter (SW/4SE/4) of Section 22 of said Township and Range described as follows:

"Beginning at Witness Corner to Corner No. 22 of the Callahan Ranch, a steel rail set in concrete at 162 feet South of said Corner No. 22 which is identical with the Northeast Corner of the NW/4 of the NE/4 of said Section 27; and running thence along the East lines of said subdivision north 500 feet; thence West 100 feet; thence South 500 feet; thence East 100 feet to the place of beginning, containing 1.15 acres."

Tract no. 2

All that part of the SW/4NE/4 of Section 27, Township 10 South, Range 80 West of the 6th P.M., described as follows:

"Beginning at a point on the East boundary of said subdivision N. 660 ft, from the Southeast corner of said subdivision and 1950 feet from Corner No. 23 of the Callahan Ranch; and running thence along the East boundary of said subdivision N. 450 ft.; thence W. 100 ft; thence S. 450 ft.; thence E. 100 ft. to the place of beginning. Containing 1.03 acres."

Tract no. 3

All that part of the SE/4SE/4 of Section 27, Township 10 South, Range 80 West of the 6th P.M. described as follows:

"Beginning at Corner No 24 of the Callahan Ranch, a steel rail set in concrete to mark the Northeast corner of said subdivision; and running thence along the East boundary of said subdivision S. 440 feet; thence W. 150 feet; thence N. 440 feet; thence E along North boundary of said subdivision 150 feet to the place of beginning. Containing 1.52 acres."

2. That portion conveyed by Warranty Deed to the Denver and Rio Grande Western Railroad Company, recorded in Book 335 at Page 165 of the Lake County, Colorado records, to wit:

A 75 foot wide strip of land near Kobe, Lake County, Colorado, lying between lines parallel with and 25 feet and 100 feet easterly at right angles from the center lines of the main track of the Denver and Rio Grande Western Railroad Company, as said track is presently constructed and operated over and across the SE/4 of Section 34, T10S, R80W, and the NE/4NE/4 of Section 3, T11S, R80W of the 6th P.M., containing 7.12 acres, more or less.

3. Those portions conveyed to Mt. Elbert Plamor Ranch, Inc., a Colorado corporation, by Warranty Deed and Correction Warranty Deed, recorded in Book 347 at Pages 349 and 350, Lake County, Colorado records, to-wit:

All of Twin Lakes Addition No. 1A of the Mt. Elbert Plamor Ranch; all of Twin Lakes Addition No. 1B of the Mt. Elbert Plamor Ranch; all of South Arkansas Addition No. 2A of the Mt. Elbert Plamor Ranch; all of the SE/4SE/4 Section 11 lying East of the Arkansas River; all of the SE/4SW/4 and all of the NW/4SW/4 of Section 2 lying East of the Arkansas River; and all of the NE/4 of Section 3 lying East of the Arkansas River, all in T11S, R80W of the 6th P.M.; all of the E/2 of Section 34 lying East of the Arkansas River; all of the W/2NE/4 and all of the SE/4 of Section 27, except the NE/4SE/4 of said Section 27; lying East of the Arkansas River; all of the W/2SE/4 of Section 22 lying East of the Arkansas River, and all of the SW/4 Section 35, all in T10S, R80W of the 6th P.M.

Note: This parcel (#3) above was also conveyed from Twin Lakes Corporation to Mt. Elbert Plamor Ranch by Warranty Deed dated 8/31/67 and recorded 9/8/67 in Book 373 at Page 10 of the records of Lake County, Colorado.

(cont.) Excepting therefrom and expressly reserving to the said grantors a strip of land 20 feet in width adjacent to any land which is subject to the control and supervision of the United States Bureau of Land Management.

4. That portion conveyed by Warranty Deed, recorded February 20, 1963, in Book 350 at Page 440 of the Lake County, Colorado records to the Mt. Elbert Plamor Ranch, Inc., a Colorado corporation, described as follows:

That strip of land 20 feet in width adjacent to all lands subject to the control and supervision of the Bureau of Land Management as the same is described and reserved to the grantors in that certain deed between Robert S. Erickson, Helen G. Erickson, Clayton Hill and Mt. Elbert Plamor Ranch, Inc., a Colorado corporation, recorded March 7, 1962, Reception No. 232637 in Book 347 at Page 349, Lake County, Colorado records.

5. That portion conveyed by Quitclaim Deed to Lake County, Colorado dated July 21, 1908 and recorded July 22, 1908 in Book 210 at Page 510 of the Public Records of Lake County, Colorado, described as follows:

A strip of ground sixty (60) feet wide being a part of Section 22, Township 10 South, Range 80 West of the 6th P.M. extending thirty (30) feet on each side of a line beginning at a point on the county road between Leadville, Colorado, and Granite, Colorado, whence the East quarter-corner (E 1/4 corner) to said Section 22, Twp. 10 S., Rge. 80 W of the 6th P.M. bears N 88°45'E 1375.3 ft. Running thence West 1245 feet to a point. Thence South 22°25' West 221 feet to a point, thence South 54°49' West 127.8 feet to a point; thence South 62°48' West 1510 feet to a point; thence South 50°43' West 96.15 feet to a point on the County road from Leadville, Colorado to Twin Lakes, Colorado, containing 5.28 acres, exclusive of right-of-way of Denver and Rio Grande and Colorado Midland and Aspen Shortline Railroads.

6. That portion conveyed by Warranty Deed, recorded June 10, 1964, in Book 355 at Page 255 of the Lake County, Colorado records from the Twin Lakes Corporation, a Colorado corporation, to Pan-Ark Lodges, Inc., a Colorado corporation, described as follows:

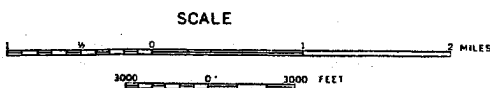
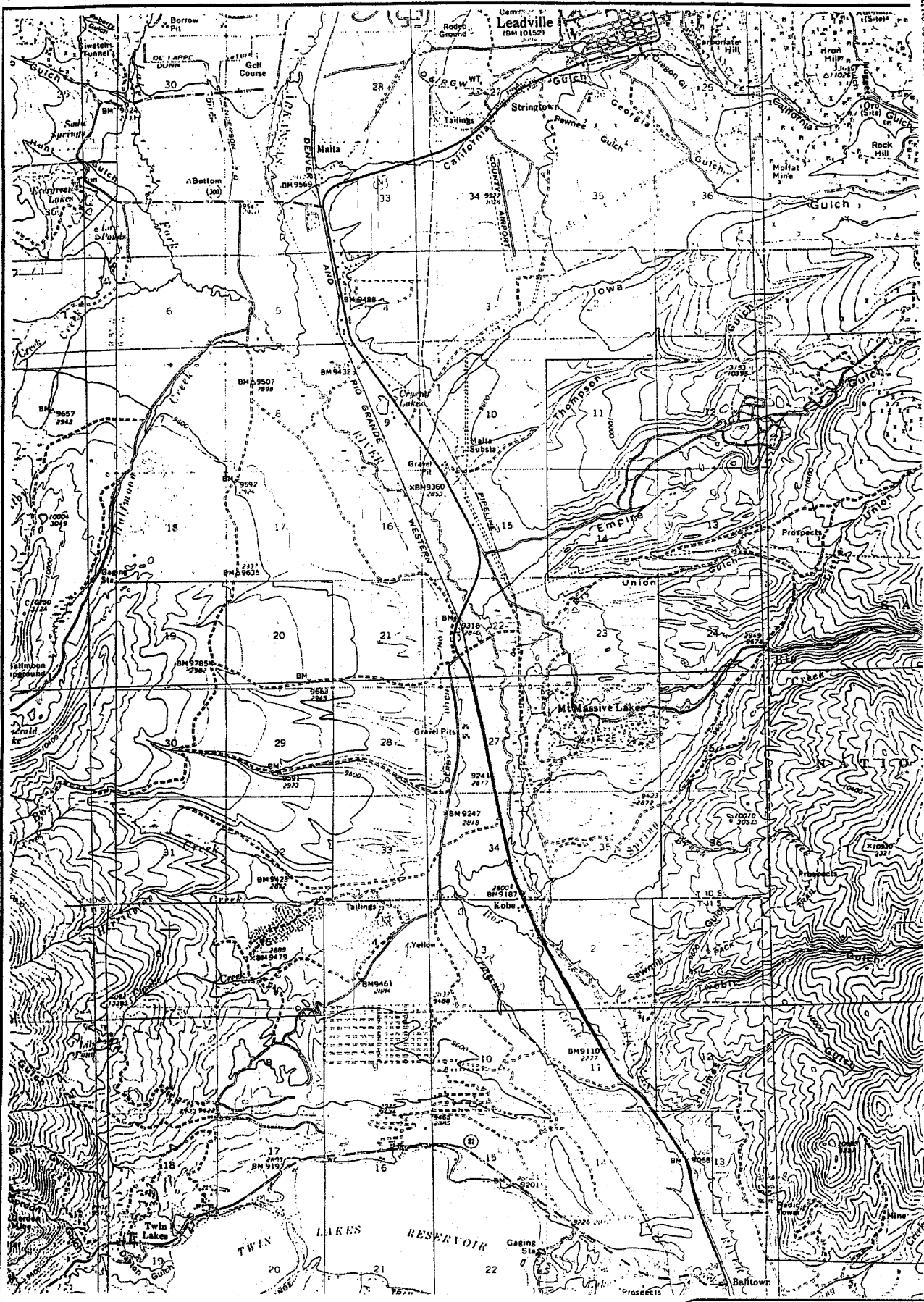
Commencing at a point on the South Section line at a point 1394.2 feet West of the Southeast corner of Section thirty-four (34), Township 10 South, Range 80 West of the 6th P.M., Lake County, Colorado, thence West 600 feet; thence Northwest and parallel to the West limits of Highway 24, 1,000 feet; thence East with an inside angle of 68°10' and parallel with the South Section line 600 feet to the West Right-of-Way limit of Highway 24; thence Southeast along Right-of-Way of Highway 24, 1,000 feet to the place of beginning.

**EXHIBIT 2
TO
AGREEMENT AND COVENANT NOT TO SUE
BETWEEN
THE UNITED STATES AND THE CITY OF AURORA, ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE**

**MAP OF
UPPER ARKANSAS FLUVIAL TAILINGS SITE**

75-70225.00
FASTARTUPPER.ARK70225V.A1971ReportReport.mxd

US Mapping Services, Inc.
7401 E. 1st Avenue
Suite 100
Denver, CO 80231



START REGION 8
Job# 75-70225.00

Upper Arkansas River Fluvial Tailings
SITE LOCATION MAP
Figure 1

January 1998



SOURCE: Lake County, County Map Series (Topographic) 1975

Upper Arkansas River Fluvial Tailings
Sampling Activities Report
Date: 01/18/98
Page 18 of 18

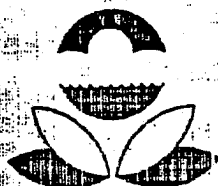
EXHIBIT 3
TO
AGREEMENT AND COVENANT NOT TO SUE
BETWEEN
THE UNITED STATES AND THE CITY OF AURORA, ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE
FALL 1997 SAMPLING ACTIVITIES REPORT

**EXHIBIT 4
TO
AGREEMENT AND COVENANT NOT TO SUE
BETWEEN
THE UNITED STATES AND THE CITY OF AURORA, ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE
MONITORING AND MAINTENANCE PLAN¹**

¹ The Monitoring and Maintenance Plan will be drafted between the parties to the Agreement and appended at a later date.

START

Superfund Technical Assessment and Response Team
-Region VIII



United States
Environmental Protection Agency

Contract No. 68-W5-0031

SAMPLING ACTIVITIES REPORT FALL 1997 SAMPLING

**UPPER ARKANSAS RIVER FLUVIAL TAILINGS
Leadville, Colorado**

TDD No. 9702-0025

JANUARY 16, 1998



URS

OPERATING SERVICES, INC.

EXHIBIT "2"
DESCRIPTION OF RIVER PARCEL D
BEING ACQUIRED BY CPI
(2 pages)

Lake County, Colorado:

Legal Description of River Parcel D

A PARCEL OF LAND DEPICTED ON A MAP ENTITLED "CITY OF AURORA (HAYDEN RANCH) BOUNDARY SURVEY" LOCATED IN THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 11 SOUTH, RANGE 80 WEST AND THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 10 SOUTH, RANGE 80 WEST OF THE SIXTH PRINCIPAL MERIDIAN, LAKE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 3, BEING MARKED BY A SPIKE FOUND IN THE TRAVELED WAY OF LAKE COUNTY ROAD 55;

THENCE SOUTH 89° 54' 09" WEST ALONG THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 950.40 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 24 AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89° 54' 09" WEST ALONG THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 600.00 FEET;

THENCE NORTH 21° 35' 14" WEST ALONG LAND OF PAN-ARK LODGES, INC. (MOOSEHAVEN), A DISTANCE OF 1,000.00 FEET;

THENCE SOUTH 89° 11' 20" WEST, A DISTANCE OF 182.07 FEET;

THENCE SOUTH 11° 49' 11" EAST, A DISTANCE OF 1,806.66 FEET;

THENCE SOUTH 64° 09' 39" EAST, A DISTANCE OF 515.82 FEET;

THENCE SOUTH 41° 38' 46" EAST, A DISTANCE OF 240.52 FEET;

THENCE SOUTH 62° 07' 23" EAST, A DISTANCE OF 633.13 FEET;

THENCE SOUTH 77° 56' 10" EAST, A DISTANCE OF 227.67 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 24, THIS AND THE PRECEDING FIVE (5) COURSES BEING ALONG THE WEST PARCEL;

THENCE NORTHWESTERLY AND DEFLECTING TO THE RIGHT 178.18 FEET ALONG THE ARC OF A CURVE HAVING A RADIUS OF 5,781.24 FEET AND A DELTA ANGLE OF 01° 45' 57" (CHORD BEARING NORTH 22° 40' 01" WEST - CHORD 178.18 FEET);

THENCE NORTH 21° 47' 12" WEST, A DISTANCE OF 1,175.38 FEET;

THENCE NORTH 68° 12' 48" EAST, A DISTANCE OF 10.00 FEET;

THENCE NORTH 21° 35' 14" WEST, A DISTANCE OF 355.65 FEET TO THE POINT OF BEGINNING, THIS AND THE PRECEDING THREE (3) COURSES BEING ALONG THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 24.

THE HEREIN DESCRIBED PARCEL CONTAINS 36.15 ACRES.

SUBJECT TO EXISTING RIGHTS-OF-WAY AND EASEMENTS.

PREPARED BY: BEAR SURVEYING SERVICES, INC.
CHARLES E. BEAR, PLS 31544

EXHIBIT "3"
MAP OF PROPERTY
 (for illustrative purposes only, not meant to establish boundaries)

